

1 DAVID H. KRAMER, State Bar No. 168452  
dkramer@wsgr.com  
2 SAMUEL J. DIPPO, State Bar No. 310643  
sdippo@wsgr.com  
3 WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation  
4 650 Page Mill Road  
Palo Alto, CA 94304-1050  
5 Telephone: (650) 493-9300  
Facsimile: (650) 565-5100  
6

Attorneys for Defendants  
7 YOUTUBE, LLC and GOOGLE LLC  
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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION  
13

14 AKIKO KIJIMOTO,  
15 Plaintiff,  
16 v.  
17 YOUTUBE, LLC and GOOGLE LLC,  
18 Defendants.  
19  
20

CASE NO.: 4:18-cv-0754-HSG

**NOTICE OF MOTION AND  
DEFENDANTS' MOTION TO DISMISS  
PURSUANT TO FED. R. CIV. P. 8(a);  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Hearing Date: May 24, 2018

Time: 2:00 p.m.

Judge: Haywood S. Gilliam, Jr.



1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: PLEASE TAKE  
3 NOTICE that, on Thursday, May 24, 2018, at two o'clock in the afternoon, in the courtroom of  
4 the Honorable Haywood S. Gilliam, Jr., Ronald V. Dellums Federal Building and United States  
5 Courthouse, Courtroom 2, 4th Floor, 1301 Clay Street, Oakland, CA 94162, Defendants  
6 YouTube, LLC and Google LLC (collectively "Defendants" or "YouTube") will and hereby do  
7 renew their Motion for an order dismissing the Complaint filed by *pro se* Plaintiff Akiko  
8 Kijimoto ("Plaintiff").

9 **STATEMENT OF REQUESTED RELIEF**

10 Defendants respectfully request dismissal of the Complaint for failure to properly plead  
11 under Federal Rule of Civil Procedure 8(a). This renewed Motion is based on this Notice of  
12 Motion and Motion, the Memorandum of Points and Authorities, the Court's files in this action,  
13 the arguments of counsel, and any other matters properly before the Court.

14 **STATEMENT OF ISSUES TO BE DECIDED**

15 1. Whether the Complaint should be dismissed under Rule 8(a) for failure to contain  
16 "a short and plain statement of the claim showing that the pleader is entitled to relief."

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **INTRODUCTION**

19 The Complaint filed by *pro se* Plaintiff Akiko Kijimoto against Google Inc. (now known  
20 as Google LLC) and YouTube, LLC is unintelligible.

21 In a stream of consciousness, Plaintiff mentions copyright several times, but she does not  
22 identify a copyrighted work or any basis for a claim of infringement. She also references  
23 cyberbullying, cybercrime, life insurance, and "trafficking in persons and act of killing people  
24 because the human voice is included in the copyrighted work." Compl. 1:26-28, ECF No. 1-3.  
25 Plaintiff claims two billion dollars in damages, but there are no facts supporting any perceived  
26 grievances. The Complaint does not come close to providing notice to YouTube of the claims  
27 asserted against it.



1 The Complaint's impenetrability also prevents YouTube from identifying the defenses it  
 2 has to whatever Plaintiff's claims may be. Online services like YouTube are shielded from most  
 3 claims arising from content uploaded to their services. Section 230 of the Communications  
 4 Decency Act ("CDA") and the safe-harbor protections of the Digital Millennium Copyright Act  
 5 ("DMCA") are particularly noteworthy in this regard. But without a considerably clearer recitation  
 6 of Plaintiff's claims, YouTube cannot effectively assert these statutory immunities.

7 Even affording Plaintiff leeway as a *pro se* litigant, her Complaint falls far short of that  
 8 which is minimally required. YouTube respectfully requests the Court dismiss the complaint for  
 9 failure to comply with Federal Rule of Civil Procedure 8(a).

### 10 STATEMENT OF FACTS

11 On October 12, 2017, YouTube was served with a copy of Plaintiff's Complaint.  
 12 Although the allegations of the Complaint are difficult to recount here, at least this much can be  
 13 gleaned:

- 14 • Plaintiff Akiko Kijimoto maintains an address in Los Angeles, California. Compl. 1:1-3,  
 15 ECF No. 1-3.
- 16 • Plaintiff claims two billion dollars in damages. *Id.* at 1:21.
- 17 • Plaintiff has a YouTube channel: "rythmique. co." *Id.* at 3:27.

18 Beyond that, the Complaint contains all manner of malformed fragments, perhaps owing to some  
 19 language barrier:

- 20 • "As a life insurance, copyright, life liability insurance, as person and the person who  
 21 suffered damage." *Id.* at 1:22-23.
- 22 • "Despite repeated e-mails and reports at YouTube, I did not finish easily. I went to the  
 23 police again and again. Because I could not do anything. I have been very hard time for  
 24 long time." *Id.* at 2:1-3.
- 25 • "I divorced in 17.Jun.2016. I and my husband got confused by this YouTube video.  
 26 Because it was a karaoke video with my ex boyfriends I thought my husband did .... but  
 27 he also got identity theft damaged. [L]ike skimming damage." *Id.* at 3:3-6.



- “Mental damage. I became an adaption disorder by stress. YouTube contents started 10.Mar.2014.” *Id.* at 3:7-8.

Plaintiff has filed a strikingly similar complaint against Dwango Co., Ltd. *Akiko Kijimoto v. Dwango Co., Ltd.*, No. 2:17-cv-06448-PSG-MRW, ECF No. 1-2 (Complaint Removed Aug. 31, 2017); Dippo Decl. Ex. 1. In that case, the court dismissed the action on jurisdictional grounds. *Akiko Kijimoto v. Dwango Co., Ltd.*, No. 2:17-cv-06448-PSG-MRW, ECF No. 26 (Order Granting Motion to Dismiss Oct. 20, 2017); Dippo Decl. Ex. 2 at 3-6. In doing so, the court held “[t]he factual allegations underpinning Plaintiff’s claims are unclear.” *Id.* at 2. The court has since dismissed Plaintiff Akiko Kijimoto’s amended complaint after she failed to respond to Dwango Co., Ltd.’s motion to dismiss the amended complaint. *Akiko Kijimoto v. Dwango Co., Ltd.*, No. 2:17-cv-06448-PSG-MRW, ECF No. 31 (Order Granting Defendant’s Motion to Dismiss Jan. 12, 2018); Dippo Decl. Ex. 3.

Because the Complaint here repeatedly references “copyright,” YouTube removed the case to the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 1446(b) and 1454. On January 22, 2018, after an order to show cause proceeding, the Honorable Judge John A. Kronstadt concluded there was federal subject matter jurisdiction over the case, and granted Defendants’ Motion to Transfer Venue based on the forum-and-venue-selection clause of the parties’ agreement. ECF No. 29. With respect to Defendants’ concurrent Motion to Dismiss, Judge Kronstadt observed the Complaint was “not clear,” but left the substance for this Court to address. *Id.*

## ARGUMENT

### A. Legal Standard

“Rule 8(a) is grounds for dismissal independent of Rule 12(b)(6).” *Gottschalk v. City & Cty. of San Francisco*, 964 F. Supp. 2d 1147, 1154 (N.D. Cal. 2013) (citing *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996). “Rule 8(a) has ‘been held to be violated by a pleading that was needlessly long, or a complaint that was highly repetitious, or confused, or consisted of incomprehensible rambling.’” *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011) (quoting 5 Charles A. Wright & Arthur R. Miller, *Federal Practice &*



1 *Procedure* § 1217 (3d ed. 2010)). Dismissal is appropriate where the complaint is “effectively  
 2 incomprehensible and replete with frankly implausible speculation.” *See Doose v. U.S. Treasury*  
 3 *Dept.*, No. 15-CV-5787, 2016 WL 183000, at \*3 (C.D. Cal. Jan. 13, 2016); *see also Shetty v.*  
 4 *Cisco Sys.*, No. 16-CV-06012-HSG, 2017 WL 1315570, at \*1 (N.D. Cal. Apr. 10, 2017)  
 5 (denying request for leave to proceed *in forma pauperis* and dismissing a “difficult to follow”  
 6 complaint containing “ambiguous grievances”).

#### 7 **B. Plaintiff’s Complaint Fails to Meet the Requirements of Rule 8**

8 The Complaint in this case must be dismissed because it does not clearly state Plaintiff’s  
 9 causes of action or the factual bases underlying her claims. Rule 8 requires that a complaint  
 10 contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”  
 11 Fed. R. Civ. P. 8(a)(2). While this is not a high bar, Plaintiff’s Complaint falls far short of it.

12 Rule 8 should be applied to dismiss an action “if a plaintiff fails to clearly and concisely  
 13 set forth allegations sufficient to provide defendants with notice of which defendant is being sued  
 14 on which theory and what relief is being sought against them” *Cook v. Flores*, No.  
 15 SACV1701279-R-PLA, 2018 WL 671176, at \*3 (C.D. Cal. Jan. 8, 2018), *report and*  
 16 *recommendation adopted*, No. SACV171279-R-PLA, 2018 WL 654430 (C.D. Cal. Jan. 31,  
 17 2018). That is the case here. Although Plaintiff makes frequent use of the term “copyright,”  
 18 YouTube does not know what copyrighted work, if any, Plaintiff claims to own, whether that  
 19 work is registered with the U.S. Copyright office, which of the exclusive rights reserved under  
 20 the copyright laws are at issue, what conduct by YouTube supposedly infringed those rights, or  
 21 how YouTube’s conduct or omissions allegedly harmed Plaintiff.

22 If anything, the other claims in the Complaint are even less clear, if they are intended as  
 23 claims at all. The cover sheet Plaintiff included with her state court complaint does not clarify  
 24 matters. Where she was asked to check one box for the case type that best describes her case, she  
 25 checked the boxes for business tort/unfair business practice, civil rights, defamation, fraud,  
 26 intellectual property, and professional negligence. Civil Cover Sheet 1, ECF No. 1-4. But none  
 27 of these causes of action are pleaded in the Complaint—and there are certainly no facts alleged  
 28 that would support any of them. Where claims are not clearly alleged, the court need not “divine



1 the litigant’s intent and create claims that are not clearly raised.” *Bediako v. Stein Mart, Inc.*, 354  
 2 F.3d 835, 840 (8th Cir. 2004); *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008)  
 3 (“the court need not . . . make unwarranted deductions”).

4 If YouTube could understand the claims Plaintiff is trying to raise, YouTube would  
 5 almost certainly be able to assert a variety of robust defenses to them. As to her non-copyright  
 6 claims, YouTube could assert immunity as an interactive computer service under Section 230 of  
 7 the CDA. The immunity granted by Congress to Internet services from claims based on  
 8 providing access to third-party content is reflected in two provisions of the CDA: “No provider  
 9 or user of an interactive computer service shall be treated as the publisher or speaker of any  
 10 information provided by another information content provider.” 47 U.S.C. § 230(c)(1). “No  
 11 cause of action may be brought and no liability may be imposed under any State or local law that  
 12 is inconsistent with this section.” *Id.* § 230(e)(3).

13 YouTube likely would also assert entitlement to the protections of the DMCA. *See*  
 14 17 U.S.C. § 512. Under the statute, a copyright holder who believes that infringing material has  
 15 been uploaded to a service may send a specific, tailored notice to the service requesting the  
 16 material be removed. 17 U.S.C. § 512(c)(3). Subject to certain limited exceptions inapplicable  
 17 here, so long as the service removes or disables access to the allegedly infringing material upon  
 18 receipt of required notice, it is immune from claims of infringement regarding the content. 17  
 19 U.S.C. § 512(c)(1). Again, YouTube cannot parse Plaintiff’s Complaint to determine whether  
 20 and how the DMCA applies.

## 21 CONCLUSION

22 Even with the considerable leeway afforded *pro se* litigants, the Complaint here does not  
 23 fairly apprise YouTube of the claims against it or enable it to respond. Accordingly, YouTube  
 24 respectfully requests the Court dismiss Plaintiff’s Complaint.



1 Dated: February 21, 2018

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

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3  
4 By: /s/ Samuel J. Dippo  
Samuel J. Dippo

5 Attorneys for Defendants  
6 YOUTUBE, LLC and GOOGLE LLC  
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